IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No. 52 of 2003.

Judgement reserved on: 3.5.2007

Date of decision: 11.6.2007.

National Insurance Company Ltd. ….. Appellant.

Vs.

Smt. Dilkaur & ors. …. Respondents.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellant : Mr. Ashwani K. Sharma, Advocate.

For the Respondents : Mr. Rakesh Sharma, Advocate, for respondent No. 2.

Mr. Ashwani Pathak, Advocate, for respondent No.3.

Kuldip Singh, Judge.

The National Insurance Company is in appeal against the award, dated 11.10.2002, passed by learned Motor Accident Claims Tribunal (I), Kangra at Dharamshala, in MACP No. 41-K/II/2000, awarding Rs. 65,250/- compensation to the petitioner Smt. Dilkaur, which is to be paid by all the respondents jointly and severally alongwith interest at the rate of 9% per annum, from the date of the petition till the date of the payment, insurance company – respondent No.3 has been ordered to pay the compensation amount. The amount awarded is inclusive of amount payable, under Section 140 of

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

Motor Vehicles Act, 1988 (for short, the Act). The parties are referred in the same manner as in the impugned award.

2. The facts in brief are that petitioner Smt. Dilkaur filed claim petition, under Section 166 of the Act, claiming Rs. 5,00,000/- compensation for the injuries sustained by her in an accident while travelling in jeep No. HP-39-9783 owned by respondent No. 1 Rajesh Kumar and was being driven by respondent No.2 Kuljeet Singh at the time of the accident. The jeep was insured with respondent No.3 National Insurance Company Limited.

3. The further case of the petitioner is that on 11.4.1999, she was waiting for a bus at Shila Chowk, for going to her village Sanaura (Gaggal). In the meantime, jeep No. HP-39-9739, came there, which was being driven by respondent No.2. The driver of the jeep asked the passengers waiting for the bus towards Gaggal side to board the jeep, therefore, the petitioner boarded the jeep. The jeep turned turtle near IPH Store Bhated due to rash and negligent driving of respondent No. 2 driver. The petitioner suffered multiple injuries in the accident. She was taken to hospital at Dharamshala, where she remained admitted from 11.4.1999 to 1.5.1999. The petitioner has incurred Rs. 50,000/-, on her treatment. She suffered 40% disability, which prevented her from earning Rs. 6,000/-, per month.

4. Respondents No. 1 and 2 contested the petition by filing joint reply. They submitted that petitioner is not entitled to any compensation, the amount claimed is otherwise excessive.

5. Respondent No. 3 filed separate reply and denied the accident as well as the injuries sustained by the petitioner. It has

been pleaded that respondent No.2 had not a valid driving licence to drive the vehicle and the vehicle was not insured. The petition has been filed in collusion with respondents No. 1 and 2. The vehicle was not authorized to carry the passengers. Respondent No.3, thus, denied the claim of the petitioner, for compensation. The Tribunal framed the following issues:-

1. Whether the accident took place on 11.4.1999 near Sheela Chowk due to rash and negligent driving of jeep No. HP-39-9783 by respondent No.2, in which the petitioner received injuries, as alleged? OPP.

2. Whether the petitioner is entitled to compensation? If so to what amount and from which of the respondents? OP. Parties.

3. Whether the respondent No.3, was not having a valid and effective driving licence at the time of accident? If so, its effect? OPR-3.

4. Whether jeep in question was insured with respondent No. 3? OPR- 1 & 2.

5. Whether the petition has been instituted in collusion with the respondents No. 1 and 2, as alleged? If so, its effect? OPR-3.

6. Whether the jeep was not authorized to carry passengers as alleged? If so, its effect? OPR-3.

7. Relief.

6. The Tribunal in issue No.1, has held that the accident had taken place due to rash and negligent driving of respondent No.2

and petitioner suffered injuries in the accident. In issue No. 2, the Tribunal has held the entitlement of petitioner to compensation, as noticed above. Issue No. 3, has been decided against the insurer for want of evidence. In issue No.4, it has been held that the jeep was insured vide insurance policy Ex. R-2 with respondent No.3. The issue No.5 of collusion of petitioner with respondents No. 1 and 2 in filing the petition, has been decided against respondent No.3, as the issue was not pressed by the insurance company. The issue No.6, onus of which was on the insurer, has been decided against the insurer by holding that there is no material on record that jeep was not authorized to carry the passengers. The Tribunal, ultimately passed the impugned award and in this way, the insurer is in appeal in this Court.

7. I have heard the learned counsel for the parties and have also gone through the record.

8. The learned counsel for the appellant- respondent No. 3 has submitted that petitioner-claimant was unauthorized passenger in the jeep, which was a goods vehicle. The jeep was not authorized to carry the passengers and the insurance company, as per policy, is not liable to indemnify the risk. The learned counsel for respondents No. 2 and 3 have supported the impugned award. They have submitted that insurance company has been rightly held liable to pay the compensation.

9. PW 1 LHC Balabir Singh has proved FIR Ex. PW 1/A. PW 2 Smt. Dilkaur has stated that on the asking of the driver of jeep No. HP 39-9783, she boarded the jeep at Shila Chowk. The driver

drove the jeep rashly and negligently, as a result of which jeep turned turtle near IPH Store at Bhated. She suffered injuries in the accident, her arm got fractured. She sustained injuries almost on her entire body. She was taken to Dharamshala Zonal hospital and she remained admitted there from 11.4.1999 to 1.5.1999. She was advised bed rest. She remained on bed for one year and she has not recovered even now. She is using belt and could not stand properly. She has spent Rs. 2,00,000/- on medicines. She has suffered 40% permanent disability. She was earning about Rs. 6,000/- per month. PW 4 Dr. Vaneet Aggarwal, has proved disability certificate, Ex. PY, of Smt. Dilkaur.

10. RW 1 Kuljit Singh, has stated that in the year 1999, he was driver on jeep No. HP-39-9783. He was holding a valid driving licence. He has proved on record the driving licence Ex. R-1 and insurance policy Ex. R-2 of the vehicle.

11. The point involved in the appeal is very short to the effect whether in view of insurance policy Ex. R-2, the insurance company is liable to pay the compensation. The perusal of insurance policy Ex. R-2 would show that the jeep in question was a goods vehicle. It is not the case of the petitioner that she was sitting in the jeep as owner of the goods. The insurance company is not liable to pay compensation to the petitioner on account of injuries sustained by her in the accident while she was travelling in the jeep as passenger and not as owner of the goods. In **National Insurance Co. Ltd. vs. Baljit Kaur and ors.** [2004 (2) SCC 1], the Hon'ble Supreme Court, in para-20, of the judgement, has held as follows:-

> "It is, therefore, manifest that in spite of the amendment of 1994, the effect of the provision contained in Section 147 with respect to person other than the owner of the goods or his authorized representative remains the same. Although the owner of the goods or his authorized representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor was any premium paid to the extent of the benefit of insurance to such category of people."

It is not the case of the petitioner that jeep No. HP-39-9739 was not a goods vehicle under the Act. Smt. Dilkaur was sitting in jeep as passenger and not as owner of goods. Therefore, she is not entitled to claim compensation from the insurer on account of injuries sustained by her in the jeep accident. Therefore, in view of **National Insurance Company's case** (supra), the insurance company is not liable to pay the compensation to petitioner Smt. Dilkaur and the findings of Tribunal holding the liability of insurer to pay compensation to Smt. Dilkaur, are set-aside. However, liability of other respondents to pay compensation to petitioner as held by Tribunal is upheld. The appeal of insurer is accordingly allowed.

12. The insurance company in the above appeal has deposited the entire amount of compensation. In **National Insurance Company's case** (supra), the Hon'ble Supreme Court while exonerating the insurance company directed the insurance company to satisfy the awarded amount in favour of the claimant, if not already

satisfied, and recover the same from the owner of the vehicle and for the purpose of recovery, it would not be necessary for the insurer to file a separate suit, but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer.

13. In **United India Insurance Company vs. Smt. Piari Devi and others [2005 (2) Shim. LC 456]**, while accepting the appeal of the insurance company and setting aside the award to the extent the insurance company was held liable, this Court permitted the claimant to withdraw the amount deposited by the insurance company to avoid further litigation. The insurance company was given liberty to recover the amount deposited by it alongwith interest from the owner by filing appropriate proceedings before the Motor Accident Claims Tribunal without being required to file separate suit or proceedings. The judgement in United India Insurance Company's case (supra) was ordered to be treated to be the decision of the dispute between the insurer and the insured.

14. In the present case also, the insurer has deposited the awarded amount in the above appeal. The insurer has been exonerated. In view of **National Insurance Co. Ltd. vs. Baljit Kaur and ors.** [2004 (2) SCC 1] and **United India Insurance Company vs. Smt. Piari Devi and others** [2005 (2) Shim. LC 456] (supra), the claimant Smt. Dilkaur is permitted to withdraw the amount deposited by the insurance company pursuant to the award. The appellant- insurance company may recover the amount deposited by

it alongwith interest from respondent No. 1- owner and respondent No. 2 driver by filing appropriate execution proceedings before the Motor Accident Claims Tribunal without being required to file separate suit or proceedings. The present judgement shall be treated to be decision of the dispute between the insurer, insured and driver of the vehicle.

15. No other point was urged.

16. The appeal is disposed of in the above terms with no orders as to costs.

June 11, 2007. **(Kuldip Singh)**
(*Hem*) **Judge.**